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July 16, 2021

Via ECF

The Honorable Lorna G. Schofield
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: United States v. Stephen M. Calk, S1 19 Cr. 366 (LGS)

Dear Judge Schofield:

On behalf of Mr. Calk, we respectfully renew our motion, made at the close of the government's case and again at the close of the evidence at trial, pursuant to Federal Rule of Criminal Procedure 29. We ask that the Court extend the time for the defense to file any written memorandum supporting that motion, as well as to file any motion pursuant to Rule 33, pursuant to the briefing schedule set forth below, to which the government consents.

The commentary to Rules 29 and 33, as well as to Rule 45 (Computing and Extending Time) make clear that the Court has the authority to extend the time in which post-trial motions may be made, as long as the request for an extension is made within 14 days after the verdict.¹ See Fed. R. Crim. P. 29, Advisory Committee's Note to 2005 Amendment ("The defendant may, under Rule 45, seek an extension of time to file the underlying motion as long as the defendant does so within the seven-day [revised in 2009 to 14-day] period."); Fed. R. Crim. P. 33, Advisory Committee's Note to 2005 Amendment (same); Fed. R. Crim. P. 45, Advisory

¹ Prior to 2005, while courts could extend the time to file post-trial motions, any such extension had to be granted within seven days of a guilty verdict. In 2005, the rules were amended to permit the court to grant an extension outside of that period. See Fed. R. Crim. P. 29, Advisory Committee's Note to 2005 Amendment ("Thus, the Committee believed that the rule should be amended to be consistent with all of the other timing requirements in the rules, which do not force the court to act on a motion to extend the time for filing within a particular period of time or lose jurisdiction to do so.").

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Committee's Note to 2005 Amendment. Courts have regularly recognized that they have the discretion to grant such an extension.²

If the Court is inclined to grant this request, we respectfully propose the following briefing schedule, agreed to with the government:

- Defendant's post-trial motions: August 20, 2021
- Government's opposition: September 24, 2021
- Defendant's reply: October 8, 2021

Respectfully submitted,

/s/ Paul H. Schoeman

Paul H. Schoeman
Darren A. LaVerne

cc: All counsel (via ECF)

The application is **GRANTED**. Any post-trial motions shall be briefed according to the following schedule:

- by **August 20, 2021**, Defendant shall file any post-trial motions;
- by **September 24, 2021**, the Government shall file an opposition; and
- by **October 8, 2021**, Defendant shall file any reply in support of such motions.

In filing post-trial motions the parties shall comply with the Court's Individual Rules of Practice in Criminal Cases.

So Ordered.

Dated: July 19, 2021

New York, New York

LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

² See e.g., *United States v. Owen*, 559 F.3d 82, 83-84 (2d Cir. 2009) (Rule 33 is “not ‘jurisdictional’ and is therefore subject to the time-modification provisions of Rule 45(b) of the Federal Rules of Criminal Procedure.”); *United States v. Pauling*, 256 F. Supp. 3d 329, 340 (S.D.N.Y. 2017) (“After the jury returned its verdict, defense counsel stated its intention to ‘make a renewed Rule 29 motion with respect to Count One’ and orally asked the Court to ‘extend the time from 14 days provided by the rule to 30 days.’ That request was granted, resulting in a March 20, 2017 deadline.” (internal citation omitted)); *United States v. Johnson*, No. 10 Cr. 431(CM), 2014 WL 6487625, at *1 (S.D.N.Y. Nov. 18, 2014) (“A court may extend the 14 day period [for filing post-trial motions] only if [the] defendant asks for an extension prior to the date when the filing is due.”).